

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBP No.7 of 2022

M/s. Shree Balaji Engicons Limited ***Petitioner***
(SBEL), Jharsuguda

Mr. S. B. Upadhyay, Senior Advocate

-versus-

Odisha Coal & Power Ltd.(OCPL), ***Opposite Party***
Bhubaneswar

Mr. Ipsit Aurobindo Acharya, Advocate

**CORAM:
THE CHIEF JUSTICE**

ORDER
18.11.2022

Order No.

06. 1. In this petition which is seeking an appointment of an Arbitrator to adjudicate the disputes between the parties arising out of the E-Tender Agreement dated 20th May 2019, a reply has been filed by the Opposite Party pointing out that an affidavit was submitted by the Petitioner on 7th August, 2020 in the form of “CERTIFICATE OF CONTRACT COMPLETION AND NO DUE CLAIM” undertaking not to raise any further dispute or claim.
2. However, Mr. S. B. Upadhyay, learned Senior Counsel appearing for the Petitioner points out that this was done under duress and immediately thereafter on 8th August, 2020 a letter was written by the Petitioner to the Opposite Party stating that non-release of the outstanding payments, NOC submitted “shall be treated as invalid.”

3. The question whether the Petitioner had in fact waived its further claims by virtue of the above NOC in the form of an affidavit appears to itself be an arbitrable dispute. In the considered view of the Court, this apart from the claims and counter claims, if any, of the parties should also be examined by the Arbitral Tribunal.

4. Although the Agreement in question envisages a Three-Member Arbitral Tribunal, both parties agree that the Court can refer the disputes to a sole Arbitrator.

5. In that view of the matter, the Court appoints **Mr. Justice Pramath Patnaik**, former judge of this Court as the sole Arbitrator to adjudicate the disputes between the parties. The arbitration shall take place under the aegis of the High Court of Orissa Arbitration Centre.

6. The arbitration petition is disposed of accordingly. A copy of this order be communicated to the Coordinator, Orissa Arbitration Centre and the learned Arbitrator forthwith.

7. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

M. Panda